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Legal Representatives for Complainant

**BEFORE THE  
PHYSICAL THERAPY BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

JEAN MARIE SWAN  
248 Military Way  
Benicia CA 94510

Physical Therapist License No. PT 9262

Respondent.

Case No. 1D 2002 63113

OAH No. N2004090131

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the  
above-entitled proceedings that the following matters are true:

**PARTIES**

1. Steven K. Hartzell (Complainant) is the Executive Officer of the Physical  
Therapy Board of California. He brought this action solely in his official capacity and is  
represented in this matter by Bill Lockyer, Attorney General of the State of California, by  
Catherine E. Santillan, Senior Legal Analyst.

2. Respondent Jean Marie Swan (Respondent) is represented in this  
proceeding by attorney Harry S. Stern, Rains Lucia & Wilkinson LLP, whose address is 2300  
Contra Costa Blvd., Ste. 230, Pleasant Hill, CA 94523.

3. On or about August 15, 1979, the Physical Therapy Board of California  
issued Physical Therapist License No. PT 9262 to Jean Marie Swan (Respondent). The license

1 was in full force and effect at all times relevant to the charges brought in Accusation No. 1D  
2 2002 63113 and will expire on May 31, 2005, unless renewed.

3 JURISDICTION

4 4. Accusation No. 1D 2002 63113 was filed before the Physical Therapy  
5 Board of California (Board) , Department of Consumer Affairs, and is currently pending against  
6 Respondent. The Accusation and all other statutorily required documents were properly served  
7 on Respondent on April 8, 2004. Respondent timely filed her Notice of Defense contesting the  
8 Accusation. A copy of Accusation No. 1D 2002 63113 is attached as exhibit A and incorporated  
9 herein by reference.

10 ADVISEMENT AND WAIVERS

11 5. Respondent has carefully read, fully discussed with counsel, and  
12 understands the charges and allegations in Accusation No. 1D 2002 63113. Respondent has also  
13 carefully read, fully discussed with counsel, and understands the effects of this Stipulated  
14 Settlement and Disciplinary Order.

15 6. Respondent is fully aware of her legal rights in this matter, including the  
16 right to a hearing on the charges and allegations in the Accusation; the right to be represented by  
17 counsel at her own expense; the right to confront and cross-examine the witnesses against her;  
18 the right to present evidence and to testify on her own behalf; the right to the issuance of  
19 subpoenas to compel the attendance of witnesses and the production of documents; the right to  
20 reconsideration and court review of an adverse decision; and all other rights accorded by the  
21 California Administrative Procedure Act and other applicable laws.

22 7. Respondent voluntarily, knowingly, and intelligently waives and gives up  
23 each and every right set forth above.

24 CULPABILITY

25 8. Respondent admits the truth of each and every charge and allegation in  
26 Accusation No. 1D 2002 63113.

27 9. Respondent agrees that her Physical Therapist License is subject to  
28 discipline and she agrees to be bound by the Physical Therapy Board of California (Board) 's

1 imposition of discipline as set forth in the Disciplinary Order below.

2 CONTINGENCY

3 10. This stipulation shall be subject to approval by the Physical Therapy Board  
4 of California. Respondent understands and agrees that counsel for Complainant and the staff of  
5 the Physical Therapy Board of California may communicate directly with the Board regarding  
6 this stipulation and settlement, without notice to or participation by Respondent or her counsel.  
7 By signing the stipulation, Respondent understands and agrees that she may not withdraw her  
8 agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon  
9 it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement  
10 and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be  
11 inadmissible in any legal action between the parties, and the Board shall not be disqualified from  
12 further action by having considered this matter.

13 11. The parties understand and agree that facsimile copies of this Stipulated  
14 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same  
15 force and effect as the originals.

16 12. In consideration of the foregoing admissions and stipulations, the parties  
17 agree that the Board may, without further notice or formal proceeding, issue and enter the  
18 following Disciplinary Order:

19 DISCIPLINARY ORDER

20 IT IS HEREBY ORDERED that Physical Therapist License No. 9262 issued to  
21 Respondent Jean Marie Swan (Respondent) is revoked. However, the revocation is stayed.  
22 Respondent's license is suspended until she provides verification of enrollment in the Board's  
23 Diversion Program. Respondent's license is placed on probation for seven (7) years on the  
24 following terms and conditions.

25 1. RESTRICTION OF PRACTICE - REPORTING REQUIREMENTS

26 Each day, respondent shall personally report to a physical therapist, director of nursing, or other  
27 licensed health care professional approved by the Board, who has received a copy of the  
28 accusation and disciplinary order, prior to providing physical therapy services.

1                   2.     RESTRICTION OF PRACTICE - PROHIBITION OF SELF  
2 EMPLOYMENT OR OWNERSHIP Respondent may not be the sole proprietor or partner in the  
3 ownership of any business that offers physical therapy services. Respondent may not be an  
4 officer of any corporation that offers or provides physical therapy services. Respondent may not  
5 employ physical therapists, physical therapist assistants or physical therapy aides.

6  
7                   3.     RESTRICTION OF PRACTICE - NO EMPLOYMENT OR  
8 SUPERVISION OF PHYSICAL THERAPY STUDENT INTERNS Respondent shall not  
9 supervise any physical therapy student interns during the entire period of probation. Respondent  
10 shall terminate any such supervisory relationship in existence on the effective date of this  
11 probation.

12                  4.     RESTRICTION OF PRACTICE - NO EMPLOYMENT OR  
13 SUPERVISION OF PHYSICAL THERAPIST LICENSE APPLICANTS, PHYSICAL  
14 THERAPIST ASSISTANT APPLICANTS Respondent shall not supervise any physical  
15 therapist license applicants or physical therapist assistant applicants during the entire period of  
16 probation. Respondent shall terminate any such supervisory relationship in existence on the  
17 effective date of this probation.

18                  5.     RESTRICTION OF PRACTICE - ADMINISTRATION OR  
19 POSSESSION OF CONTROLLED SUBSTANCES Respondent shall not administer or possess  
20 any controlled substances as defined in the California Uniform Controlled Substances Act. This  
21 prohibition does not apply to medications lawfully prescribed to respondent for a bona fide  
22 illness or condition by a practitioner licensed to prescribe such medications.

23                  6.     PROHIBITION OF POSSESSION OR USE OF CONTROLLED  
24 SUBSTANCES Respondent shall abstain completely from the personal use or possession of  
25 controlled substances as defined in the California Uniform Controlled Substances Act, dangerous  
26 drugs as defined by Section 4211 of the Business and Professions Code, or any drugs requiring a  
27 prescription. This prohibition does not apply to medications lawfully prescribed to respondent  
28 for a bona fide illness or condition by a practitioner licensed to prescribe such medications.

1                   7.     PROHIBITION OF THE USE OF ALCOHOL Respondent shall abstain  
2 completely from the use of alcoholic beverages.

3                   8.     BIOLOGICAL FLUID TESTING Respondent shall immediately submit  
4 to biological fluid testing, at respondent's cost, upon the request of the Board or its designee.

5  
6                   9.     DIVERSION PROGRAM Respondent shall enroll and participate in the  
7 Board's Diversion Program until the Board determines that participation in the diversion program  
8 is no longer necessary. Failure to comply with requirements of the Diversion Program,  
9 terminating the program without permission or being expelled for cause shall constitute a  
10 violation of probation by respondent.

11                  10.    PROBATION MONITORING COSTS In recognition of respondent's  
12 financial obligations, probation monitoring costs beginning with the thirteenth month of  
13 probation shall be reimbursed by respondent. Respondent will then be billed at least quarterly.  
14 Failure to make the ordered reimbursement within 60 days of the billing shall constitute a  
15 violation of the probation order.

16                  11.    COST RECOVERY Actual prosecutorial costs in this case are \$2,750.00.  
17 The respondent is ordered to reimburse the Board for costs in the amount of \$1,350.00. The  
18 respondent shall be ordered to make the reimbursement within 24 months from the effective date  
19 of the decision. Failure to make the ordered reimbursement within 24 months from the effective  
20 date will cause the total amount of \$2,750.00 to be due.

21                  12.    OBEY ALL LAWS Respondent shall obey all federal, state and local  
22 laws, and statutes and regulations governing the practice of physical therapy in California.

23                  13.    COMPLIANCE WITH ORDERS OF A COURT The respondent shall be  
24 in compliance with any valid order of a court. Being found in contempt of any court may  
25 constitute a violation of probation.

26                  14.    COMPLIANCE WITH CRIMINAL PROBATION AND PAYMENT OF  
27 RESTITUTION Respondent must not violate any terms and conditions of criminal probation  
28 and must be in compliance with any restitution ordered.

1                   15.    QUARTERLY REPORTS   Respondent shall submit quarterly  
2   declarations under penalty of perjury on forms provided by the Board, stating whether there has  
3   been compliance with all the conditions of probation.

4   ///

5                   16.    PROBATION MONITORING PROGRAM COMPLIANCE   Respondent  
6   shall comply with the Board's probation monitoring program.

7                   17.    INTERVIEW WITH THE BOARD OR ITS DESIGNEE   Respondent  
8   shall appear in person for interviews with the Board, or its designee, upon request at various  
9   intervals and with reasonable notice.

10                  18.    NOTIFICATION OF PROBATIONAL STATUS TO EMPLOYERS   The  
11   respondent shall notify all present or future employers of the reason for and the terms and  
12   conditions of the probation by providing a copy of the Accusation and the decision and order  
13   (stipulated settlement) to the employer. The respondent shall obtain written confirmation from  
14   the employer that the documents were received. If the respondent changes employment or  
15   obtains additional employment, the respondent shall provide the above notification to the  
16   employer and submit written employer confirmation to the Board within 10 days. The  
17   notification(s) shall include the name, address and phone number of the employer, and, if  
18   different, the name, address and phone number of the work location.

19                  19.    NOTIFICATION OF CHANGE OF NAME OR ADDRESS   The  
20   respondent shall notify the Board, in writing, of any and all changes of name or address within  
21   ten (10) days.

22                  20.    RESTRICTION OF PRACTICE -TEMPORARY SERVICES AGENCIES  
23   The respondent shall not work for a temporary services agency or registry.

24                  21.    PROHIBITED USE OF ALIASES   Respondent may not use aliases and  
25   shall be prohibited from using any name which is not her legally-recognized name or based upon  
26   a legal change of name.

27                  22.    WORK OF LESS THAN 20 HOURS PER WEEK   If the respondent  
28   works less than 192 hours in a period of three months, those months shall not be counted toward

1 satisfaction of the probationary period. The respondent shall notify the Board if her works less  
2 than 192 hours in a three month period.

3           23.     TOLLING OF PROBATION The period of probation shall run only  
4 during the time respondent is practicing within the jurisdiction of California. If, during  
5 probation, respondent does not practice within the jurisdiction of California, respondent is  
6 required to immediately notify the probation monitor in writing of the date that respondent's  
7 practice is out of state, and the date of return, if any. Practice by the respondent in California  
8 prior to notification to the Board of the respondent's return will not be credited toward  
9 completion of probation. Any order for payment of cost recovery shall remain in effect whether  
10 or not probation is tolled.

11           24.     VIOLATION OF PROBATION If respondent violates probation in any  
12 respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke  
13 probation and carry out the disciplinary order that was stayed. If an accusation or petition to  
14 revoke probation is filed against respondent during probation, the Board shall have continuing  
15 jurisdiction until the matter is final, and the period of probation shall be extended until the matter  
16 is final.

17           25.     CESSATION OF PRACTICE DUE TO RETIREMENT, HEALTH OR  
18 OTHER REASONS Following the effective date of this probation, if respondent ceases  
19 practicing physical therapy due to retirement, health or other reasons, respondent may request to  
20 surrender her license to the Board. The Board reserves the right to evaluate the respondent's  
21 request and to exercise its discretion whether to grant the request or to take any other action  
22 deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the  
23 tendered license, the terms and conditions of probation shall be tolled until such time as the  
24 license is no longer renewable, the respondent makes application for the renewal of the tendered  
25 license or makes application for a new license.

26           26.     COMPLETION OF PROBATION Upon successful completion of  
27 probation, respondent's license or approval shall be fully restored.

28           27.     WRITTEN EXAM ON THE LAWS & REGULATIONS GOVERNING

1 THE PRACTICE OF PHYSICAL THERAPY Within 90 days of the effective date of this  
2 decision, respondent shall take and pass the Board's written examination on the laws and  
3 regulations governing the practice of physical therapy in California. If respondent fails to pass  
4 the examination, respondent shall be suspended from the practice of physical therapy until a  
5 repeat examination has been successfully passed.

6 28. PRACTICE OR PERFORMANCE OF PHYSICAL THERAPY WHILE  
7 ON PROBATION It is not contrary to the public interest for the respondent to practice/perform  
8 physical therapy under the probationary conditions specified in the disciplinary order.

9 ACCEPTANCE

10 I have carefully read the above Stipulated Settlement and Disciplinary Order and  
11 have fully discussed it with my attorney, Harry S. Stern. I understand the stipulation and the  
12 effect it will have on my Physical Therapist License. I enter into this Stipulated Settlement and  
13 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the  
14 Decision and Order of the Physical Therapy Board of California.

15 DATED: October 1, 2004 .

16  
17 Original Signed By:  
18 JEAN MARIE SWAN  
19 Respondent  
20  
21  
22  
23  
24  
25

26 I have read and fully discussed with Respondent Jean Marie Swan the terms and  
27 conditions and other matters contained in the above Stipulated Settlement and Disciplinary  
28 Order. I approve its form and content.



1 DATED: October 1, 2004 .

2  
3 Original Signed By:  
4 HARRY S. STERN  
5 RAINS, LUCIA & WILKINSON LLP  
6 Attorney for Respondent

7  
8 ENDORSEMENT

9 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
10 submitted for consideration by the Physical Therapy Board of California of the Department of  
11 Consumer Affairs.

12 DATED: October 1, 2004 .

13  
14 BILL LOCKYER, Attorney General  
15 of the State of California

16 Original Signed By:  
17 CATHERINE E. SANTILLAN  
18 Senior Legal Analyst

19 Legal Representatives for Complainant

20 DOJ Matter ID: SF2004AD0002  
21 Swan Decision.wpd  
22  
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**Exhibit A**

**Accusation No. 1D 2002 63113**

**BEFORE THE  
PHYSICAL THERAPY BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

JEAN MARIE SWAN  
248 Military Way  
Benicia CA 94510

Physical Therapist License No. 9262

Respondent.

Case No. 1D 2002 63113

OAH No.

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Physical Therapy Board of California, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on November 22, 2004.

It is so ORDERED October 21, 2004.

Original Signed By: Donald Chu, PhD, PT, President  
FOR THE PHYSICAL THERAPY BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS